

FEDERAL SECTION

Federal Communications Commission

FCC 97-357

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DISPATCHED BY

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington D.C. 20554

Policy and Rules Concerning the )  
Interstate, Interexchange Marketplace )  
Implementation of Section 254(g) of the ) CC Docket No. 96-61  
Communications Act of 1934, as amended )

**ORDER**

Adopted: **October 2, 1997**

Released: **October 3, 1997**

By the Commission:

**I. INTRODUCTION**

1. In this Order, we grant, in part, and deny, in part, a motion filed by PrimeCo Personal Communications, LP ("PrimeCo") requesting a stay of enforcement of Section 64.1801 of the Commission's Rules, 47 C.F.R. 64.1801, with respect to application of rate integration requirements to Commercial Mobile Radio Service ("CMRS") providers pending reconsideration of the Commission's *Rate Integration Reconsideration Order*.<sup>1</sup> We deny PrimeCo's petition for stay of application of rate integration requirements to providers of CMRS services, but grant PrimeCo's request that we stay for CMRS providers, pending further reconsideration, application of our requirements that providers of interstate interexchange services integrate rates across affiliates. We also stay, pending reconsideration, application of rate integration requirements with respect to wide area rate plans offered by CMRS providers.

**II. BACKGROUND**

2. Section 254(g) of the Telecommunications Act of 1996 states that "a provider

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<sup>1</sup> *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61, First Memorandum Opinion and Order on Reconsideration, FCC 97-269, rel. July 30, 1997 ("*Rate Integration Reconsideration Order*").

of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State."<sup>2</sup> This is the statutory provision that imposes the rate integration requirement on providers of interexchange services.

3. In the *Rate Averaging and Rate Integration Report & Order*,<sup>3</sup> we adopted a rate integration rule that reiterated the language of section 254(g). We stated that this rule would incorporate our existing rate integration policy, and would apply to all interstate interexchange services as defined in the Act and to all providers of these services.<sup>4</sup> We also determined, *inter alia*, that American Mobile Satellite Carriers Subsidiary Corp. ("AMSC"),<sup>5</sup> a CMRS service provider, is required to integrate rates charged for its offshore service into the rate structure offered for its mainland service, because its services appear to fall within the definition of interstate interexchange telecommunications services subject to section 254(g).<sup>6</sup> In the *Rate Integration Reconsideration Order*,<sup>7</sup> we repeated this conclusion stating that the service offered by AMSC's mobile satellite is an interstate interexchange telecommunications service subject to rate integration requirements.<sup>8</sup> We also denied AMSC's petition for reconsideration and forbearance.

4. In a petition for reconsideration of the *Rate Averaging and Rate Integration Order*, GTE Service Corporation ("GTE") asked the Commission to clarify whether it meant all GTE-affiliated carriers are to integrate rates, and specifically, "whether this direction was meant to include affiliated CMRS providers or interexchange resellers and, if so, that the

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<sup>2</sup> 47 U.S.C. § 254(g).

<sup>3</sup> See *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended*, Report and Order, 11 FCC Rcd 9564 (1996) ("*Rate Averaging and Rate Integration Order*").

<sup>4</sup> *Id.* at ¶ 52.

<sup>5</sup> AMSC provides mobile satellite service through a satellite system that provides two-way mobile voice communications throughout the United States, including Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands, and coastal waters. Petition for Reconsideration filed by AMSC Subsidiary Corporation, CC Docket No. 96-61, Sept. 16, 1996, at 2.

<sup>6</sup> *Rate Averaging and Rate Integration Order*, ¶ 54.

<sup>7</sup> *Implementation of Section 254(g) of the Communications Act of 1934, as amended*, First Memorandum Opinion and Order on Reconsideration, FCC 97-269, -- FCC Rcd. -- (rel. July 30, 1997) ("*Rate Integration Reconsideration Order*").

<sup>8</sup> *Id.* at ¶ 24.

[*Rate Averaging and Rate Integration Order*] is intended to override other FCC policies that may impose inconsistent requirements on affiliates."<sup>9</sup>

5. We addressed GTE's petition for clarification in paragraph 18 of the *Rate Integration Reconsideration Order*.<sup>10</sup> We clarified that our rules implementing section 254(g) require carriers to integrate their rates across affiliates,<sup>11</sup> but do not require a carrier to integrate an interstate interexchange CMRS service with other interstate interexchange service offerings.<sup>12</sup> We stated that our rate integration rules require CMRS providers to provide interstate interexchange CMRS service on an integrated basis in all their states.<sup>13</sup>

### III. POSITION OF THE PARTIES

#### A. PrimeCo's Motion for Stay

6. On September 23, 1997, PrimeCo filed a motion for stay of enforcement of Section 64.1801 of the Commission's Rules, 47 C.F.R. 64.1801, pending reconsideration of the Commission's *Rate Integration Reconsideration Order*.<sup>14</sup> PrimeCo seeks a stay of the *Rate Integration Reconsideration Order* to the extent that it extends application of rate integration requirements to Commercial Mobile Radio Service ("CMRS") providers and to carriers that they control or own.<sup>15</sup> PrimeCo contends that the *Rate Integration Reconsideration Order* established for the first time that rate integration applies to CMRS

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<sup>9</sup> Petition for Reconsideration and Clarification filed by GTE Service Corporation on behalf of its affiliated telecommunications companies, ("GTE Petition for Recon."), CC Docket No. 96-61, Sept. 16, 1996, at 11-12.

<sup>10</sup> *Rate Integration Reconsideration Order* at ¶ 18.

<sup>11</sup> PrimeCo has referred to this as the "affiliate requirement." We applied the current definitions of "affiliate" and "control" in section 32.9000 of the Commission's rules to determine whether companies are sufficiently related so that they must integrate rates. *Rate Integration Reconsideration Order* at ¶ 17.

<sup>12</sup> *Id.* at ¶ 18.

<sup>13</sup> *Id.*

<sup>14</sup> Motion for Stay of Enforcement of PrimeCo Personal Communications, LP ("PrimeCo Motion") at 1. PrimeCo has stated that it will file a petition for reconsideration and/or clarification as necessary to obtain relief from the *Rate Integration Reconsideration Order*. *Id.* at 3.

<sup>15</sup> *Id.* at 1.

providers.<sup>16</sup> PrimeCo states that the Commission, at a minimum, should stay enforcement of the affiliation rules, which it maintains may require CMRS providers to engage in unlawful price fixing and otherwise violate the Commission's pro-competition policies.<sup>17</sup>

7. PrimeCo asserts that a stay of enforcement of Section 64.1801 as applied to CMRS would permit the Commission to remedy alleged procedural infirmities and develop a record upon which it may resolve issues associated with the implementation of the integration and affiliate rules to the extent they apply to the CMRS industry.<sup>18</sup> PrimeCo further claims that a temporary stay of enforcement would be consistent with prior Commission decisions in which the Commission has stayed the effectiveness of a rule in instances where, after adoption of the rule, the Commission concluded that its implementation may lead to unanticipated and unintended consequences.<sup>19</sup> PrimeCo states that, as an exercise of discretionary authority, stay of enforcement may not require satisfaction of the four-part test for granting a stay set forth in *Virginia Petroleum Jobbers Ass'n v. FPC*,<sup>20</sup> but maintains that, nevertheless, its request satisfies this standard.<sup>21</sup>

8. PrimeCo contends that there is a strong probability that the Commission's action will be rescinded or revised upon further reconsideration on the ground that application of the rate integration and affiliate requirements to a CMRS provider is procedurally deficient.<sup>22</sup> PrimeCo states that the record reveals little, if any, information supporting the need for integration of CMRS interstate, interexchange rates, or the effects of imposing rate integration with the affiliate rule upon CMRS providers.<sup>23</sup> PrimeCo states that neither the

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<sup>16</sup> *Id.* at 2.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 1-2.

<sup>19</sup> *Id.* at 4 (citing *Policies and Rules Concerning Unauthorized Changes of Consumer's Long Distance Carriers*, 11 FCC Rcd 856 (1995); *Amendment of Part 22 of the Commission's Rules Relating to License Renewals in the Domestic Public Cellular Radio Telecommunications Service*, 8 FCC Rcd 8135 (1993)).

<sup>20</sup> *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958).

<sup>21</sup> PrimeCo's Motion at 4.

<sup>22</sup> *Id.* at 5-6.

<sup>23</sup> *Id.* at 5.

*Rate Averaging and Rate Integration NPRM*<sup>24</sup> nor the *Rate Averaging and Rate Integration Report & Order* refer to CMRS carriers, and that the *Rate Integration Reconsideration Order* refers to the application of rate integration to CMRS providers in only one subordinate clause.<sup>25</sup> PrimeCo asserts that, since CMRS operates without regard to exchange boundaries, and is an end-to-end service in which some carriers bundle long distance and local service, it is unclear which CMRS offerings must be integrated.<sup>26</sup> PrimeCo further contends that section 254(g) was intended to codify the Commission's existing rate integration policy, which, according to PrimeCo, had never been applied to CMRS.<sup>27</sup> For this reason, PrimeCo claims that it is fundamentally arbitrary and capricious for the Commission to adopt a statutory interpretation that imposes new regulatory burdens upon CMRS providers, without careful analysis based upon record evidence.<sup>28</sup>

9. PrimeCo maintains that enforcement of the affiliate requirement will result in irreparable harm to PrimeCo and will have significant anti-competitive effects.<sup>29</sup> PrimeCo is owned, through intermediary partnerships, by AirTouch, US West, and Bell Atlantic, each of which arguably controls PrimeCo, and therefore, the affiliate requirement would require PrimeCo to integrate its rates with each of its three controlling parents.<sup>30</sup> This, in turn, would require all three carriers to agree to charge identical rates for their respective interstate toll services offered to their CMRS customers.<sup>31</sup> PrimeCo, as well as its controlling parents, control other CMRS carriers with other entities, resulting in an expanding "daisy-chain" of carriers that would be required to integrate rates with one another.<sup>32</sup> PrimeCo contends that application of the affiliate requirement to CMRS carriers, therefore, would require unlawful

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<sup>24</sup> *Policy and Rules Concerning the Interstate, Interexchange Marketplace -- Implementation of Section 254(g) of the Communications Act of 1934, as amended*, Notice of Proposed Rulemaking, 11 FCC Rcd 7141, 7169 n. 118 (1996) ("*Rate Averaging and Rate Integration NPRM*").

<sup>25</sup> PrimeCo's Motion at 5-6.

<sup>26</sup> *Id.* at 5.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 6.

<sup>29</sup> *Id.* at 7.

<sup>30</sup> *Id.* at 7-8.

<sup>31</sup> *Id.* at 8.

<sup>32</sup> *Id.* at 8-9.

price fixing counter to antitrust policies and the Commission's pro-competitive policies.<sup>33</sup>

10. PrimeCo contends that a temporary stay of enforcement will not injure the legitimate interests of any party and will serve the public interest.<sup>34</sup> According to PrimeCo, consumers will not be injured, because the CMRS industry previously has not been subject to rate integration obligations, and the industry is highly competitive, producing market pressures that keep rates low.<sup>35</sup> PrimeCo asserts that a stay would serve the public interest by allowing CMRS carriers to maintain competitive rate structures, and by relieving them of allegedly significant compliance burdens from imposition of the affiliate requirement.<sup>36</sup>

#### B. Comments

11. Nine parties have filed comments supporting PrimeCo's Motion for generally the same reasons stated by PrimeCo.<sup>37</sup> In addition to repeating arguments advanced in its

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 9.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Comments of Airtouch Communications, Inc. In Support of Motion for Stay of Enforcement (contending that the decision to apply rate integration to CMRS providers has serious procedural infirmities and will have severe repercussions for the CMRS industry and the public interest); Comments of GTE Service Corporation in Support of PrimeCo Personal Communications, LP Motion for Stay of Enforcement ("GTE Comments") (arguing that the Commission's interpretation of Section 254(g) is flawed, that the requirement that carriers integrate across affiliates has serious anti-competitive consequences, and that a stay should be granted to all providers of interstate interexchange services); Comments of Southwestern Bell Mobile Systems in Support of Motion for Stay of Enforcement; Comments of Omnipoint Communications, Inc. (contending that pricing and calling area decisions should be left to the marketplace and the Commission should avoid regulation that prevents a PCS operator from reacting to the price competition it finds in the marketplace); Comments of US West, Inc. (arguing that the Commission should stay enforcement of the rate integration rule to CMRS or, at a minimum, enforcement of the affiliate requirement); Comments in Support of PrimeCo's Motion for Stay of Enforcement filed by BellSouth Corporation ("BellSouth Comments") (supporting forbearance from applying Section 254(g) to CMRS carriers and their affiliates, or, at a minimum, suspension of enforcement pending reconsideration), Comments of the Cellular Telecommunications Industry Association on the Motion for Stay of Enforcement of PrimeCo Personal Communications, LP (contending that grant of a stay would avoid the harm to consumers that could result from unintended consequences of the *Reconsideration Order*, pending the Commission's consideration of petitions for clarification or further reconsideration); Comments of Personal Communications Industry Association in Support of PrimeCo Personal Communications, LP Motion for Stay of Enforcement (argues that a stay is necessary in light of the tremendous uncertainty in the industry about how the integration obligations apply to CMRS providers); Comments of Comcast Cellular Communications, Inc. (contending that a stay is necessary because the *Reconsideration Order* did not adequately analyze the likely

Petition for Reconsideration, GTE also argues that, because section 254(g) does not distinguish between "providers," any stay granting relief must be applied to all providers of interstate interexchange services.<sup>38</sup> BellSouth, in addition to supporting PrimeCo's Motion generally, expresses concern that our rate integration requirements would preclude its offering of wide area rate plans.<sup>39</sup> It requests emergency forbearance pursuant to Section 10 of the Act to prevent application of rate integration requirements to its wide area rate plans.<sup>40</sup> It also requests forbearance of any affiliate requirements.<sup>41</sup>

12. The State of Hawaii ("Hawaii"), the State of Alaska ("Alaska"), and the Commonwealth of the Northern Mariana Islands oppose the motion, arguing that PrimeCo has failed to satisfy the four-part *Virginia Petroleum Jobbers Ass'n* test for granting a stay of a Commission order.<sup>42</sup> Hawaii and Alaska also dispute PrimeCo's contention that the *Rate Integration Reconsideration Order* is procedurally deficient because the Commission for the first time imposed rate integration requirements on providers of CMRS services in the *Rate Integration Reconsideration Order*.<sup>43</sup> Hawaii and Alaska note that the Commission put everyone on notice of its view in the *Rate Averaging and Rate Integration NPRM* and *Rate Averaging and Rate Integration Order* by stating that the requirements would apply to all domestic interexchange services, and by rejecting the suggestion of AMSC that rate integration applied only to traditional wireline providers of interexchange services.<sup>44</sup> Alaska also asserts that GTE seemed to understand that its CMRS operations would be subject to rate integration requirements when it challenged the Commission's determination that all GTE affiliates would be required to integrate their rates together.<sup>45</sup> Hawaii states that PrimeCo's

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unintended consequences of the rate integration policy extended to CMRS); Comments of Telephone and Data Systems, Inc. (arguing that application of rate integration to CMRS presents complex and controversial issues as to substance and implementation of requirements).

<sup>38</sup> GTE Comments at 2, 5-6.

<sup>39</sup> BellSouth Comments at 1.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 7-12.

<sup>42</sup> Opposition of the State of Hawaii ("Hawaii's Comments") at 1, 7-10; Comments of the State of Alaska ("Alaska's Comments") at 4; Opposition of the Commonwealth of the Northern Mariana Islands at 1.

<sup>43</sup> Hawaii Comments at 3-6; Alaska Comments at 1-4.

<sup>44</sup> Hawaii Comments at 3-6; Alaska Comments at 2-3.

<sup>45</sup> Alaska Comments at 3-4.

argument that, until passage of section 254(g) CMRS providers were not subject to a rate integration requirement, is incorrect and irrelevant.<sup>46</sup>

13. Neither Hawaii nor Alaska opposes a narrowly tailored stay limited to the application of the affiliate rule to multiple, competing parent companies that jointly control a CMRS provider.<sup>47</sup> Hawaii states, however, that it opposes a stay that would permit CMRS affiliates under the common ownership and control of a single corporate parent to provide services on a non-integrated basis.<sup>48</sup> Similarly, Alaska states that the stay should not permit PrimeCo or a similarly situated firm from failing to satisfy rate integration requirements with respect to its own operations.<sup>49</sup>

#### IV. DISCUSSION

14. Pursuant to section 1.103(a) of our Rules, 47 C.F.R. § 1.103(a), we stay, pending reconsideration, for CMRS providers, application of our requirement that providers of interstate interexchange services integrate rates across affiliates.<sup>50</sup> Parties have raised in the stay requests significant issues including potential anti-competitive impacts of requiring rate integration across affiliates that may require alteration of the rule with respect to CMRS affiliates. We also stay, pending reconsideration, application of our rate integration rule to the extent that it otherwise would apply to wide area rate plans offered by CMRS providers. Given these two actions, however, we decline to stay enforcement of our requirement that CMRS carriers provide interstate interexchange services on an integrated basis. Under this decision, CMRS providers must provide any separate offering of interstate interexchange service on an integrated basis, but are not required, pending further reconsideration, to integrate rates across affiliates, or to implement rate integration for wide area rate plans. Our stay of rate integration requirements only applies to CMRS providers. Other carriers, including other wireless carriers, are not covered by this stay.

15. We will stay application of our rule that requires CMRS providers to integrate their rates to the extent that they provide CMRS service through wide area rate plans, pending

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<sup>46</sup> Hawaii Comments at 9.

<sup>47</sup> Hawaii Comments at 10; Alaska Comments at 5, n. 3.

<sup>48</sup> Hawaii Comments at 11.

<sup>49</sup> Alaska Comments at 5, n. 3.

<sup>50</sup> We note that Hawaii and Alaska have stated that they do not oppose a stay of the application of the affiliate rule to CMRS providers. Hawaii Comments at 10; Alaska Comments at 5, n. 3.

reconsideration, pursuant to section 1.103(a) of our Rules, 47 C.F.R. § 1.103(a).<sup>51</sup> As noted by PrimeCo, we have previously extended the effective date of rules where application of a rule could raise issues that are best resolved with the benefit of additional information and arguments.<sup>52</sup> Subject to a more complete examination of this issue on reconsideration, wide area rate plans, for purposes of the instant Order, may involve bundled offering of air time and interstate interexchange services. Wide area rate plans permit callers to make calls within a specified calling area at uniform charges specified by the carrier's particular plan. Some wide area rate plans may encompass broad geographic areas and may traverse state boundaries. In addition, carriers may offer different wide area rate plans in different areas. It is difficult to determine how rate integration should be applied with respect to wide area rate plans. We are concerned that immediate application of rate integration requirements to wide area rate plans could be disruptive to consumers. In addition, our examination of this issue would benefit from a more complete record regarding the need to require any rate integration of wide area rate plans. Thus, we will stay application of rate integration to wide area rate plans, pending further reconsideration. In order to ensure that our rules pending reconsideration will not be disruptive to local or wide area service plans, the stay will additionally apply to any separate offering of interstate interexchange service within a major trading area ("MTA"). CMRS providers will not have to modify existing wide area rate plans, or alter plans for revised or new plans, until we review this matter on a more complete record.

16. With respect to application of the affiliate rule to CMRS providers, we will, likewise, stay application of this rule pending further reconsideration, so that CMRS providers will not have to integrate rates across affiliates until we review this rule on a more complete record. Although commenters most recently had an opportunity to address the issue of application of rate integration to CMRS providers in the notice and comment period following GTE's petition for reconsideration, we received virtually no comments on the issue. The record generated in response to PrimeCo's motion suggests a significant degree of affiliation in the CMRS industry, even among carriers competing in the same market. We thus conclude it is necessary for us to examine this issue further. Temporarily staying application of the affiliate rule to providers of CMRS services will allow the Commission to develop a more complete record upon which we can fashion any necessary refinements of affiliate

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<sup>51</sup> As stated above, BellSouth requests emergency forbearance pursuant to Section 10 of the Act to prevent application of rate integration requirements to its wide area rate plans. Because we are staying application of our affiliate rule and implementation of rate integration requirements to wide area rate plans, we do not need to address further its request for forbearance.

<sup>52</sup> See, e.g., *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System*, FCC 97-196 (rel. June 6, 1997); *Policies and Rules Concerning Unauthorized Changes of Consumer's Long Distance Carriers*, 11 FCC Rcd 856 (1995).

requirements for CMRS providers. Accordingly, we will stay application of our affiliate requirement as applied to CMRS providers pending further reconsideration, pursuant to section 1.103(a) of our Rules, 47 C.F.R. § 1.103(a).

17. We disagree with GTE's contention that, because section 254(g) does not distinguish between "providers," any stay relief granted must be applied to all providers of interstate interexchange services. As we stated in the *Rate Integration Reconsideration Order*, section 254(g) does not require a carrier to integrate an interstate interexchange CMRS service with other interstate interexchange service offerings.<sup>53</sup> GTE has failed to provide any reason why a stay should apply to it. Indeed, as explained in the *Rate Integration Reconsideration Order*, not requiring GTE and other non-CMRS providers of interstate interexchange services to integrate across affiliates would prevent achievement of the purposes of section 254(g). Nothing in the record suggests that the stay adopted herein, pending reconsideration, would seriously hamper our implementation of section 254(g). Our stay of application of our rate integration affiliate requirement only applies to CMRS affiliates. GTE and other carriers that provide interstate interexchange service through means other than CMRS continue to be required to integrate rates across affiliates as determined in the *Rate Integration Reconsideration Order*.<sup>54</sup>

18. We next evaluate PrimeCo's motion under the standards of *Virginia Petroleum Jobbers Ass'n/Washington Metropolitan Area Transit Commission*.<sup>55</sup> The four factors to be considered under this test are: (1) a likelihood of success on the merits by the party requesting the stay; (2) irreparable harm in the absence of a stay; (3) no substantial harm to other interested parties if the stay is granted; and (4) public interest in favor of the stay.<sup>56</sup> We will evaluate these factors in light of our decision to stay application of rate integration to wide area rate plans offered by CMRS providers, as well as our decision to stay application of our affiliate requirement as applied to CMRS providers, pending further reconsideration.

19. We determine that PrimeCo has failed to demonstrate that it is likely to prevail on the merits of its challenge to the general application of the rate integration rules to CMRS

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<sup>53</sup> *Rate Integration Reconsideration Order* at ¶ 18.

<sup>54</sup> *Id.* at ¶ 17.

<sup>55</sup> See *Petition of the Connecticut Department Public Utility Control to Retain Regulatory Control of Wholesale Cellular Service Providers in the State of Connecticut*, FCC 95-387, 11 FCC Rcd. 848 (1995).

<sup>56</sup> *Virginia Petroleum Jobbers Ass'n*, 259 F.2d 921, 925 (D.C. Cir. 1958) as modified in *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977).

providers adopted in the *Rate Integration Reconsideration Order*.<sup>57</sup> Its principal basis for this claim is that the Commission's decision to apply rate integration requirements to providers of CMRS services is deficient in that there was allegedly inadequate notice and record to support application in this proceeding of section 254(g) to wireless carriers. The language of section 254(g), however, applies to "providers of interexchange telecommunications services" with no exceptions enumerated. Further, the *Rate Averaging and Rate Integration NPRM* stated that an interexchange call includes all means of connecting two points, "wireline or wireless."<sup>58</sup> We, therefore, find no lack of notice regarding the application of rate integration requirements to providers of CMRS services. We also reiterated in the *Rate Averaging and Rate Integration Order*, that rate integration requirements applied to "all domestic interstate interexchange telecommunication services as defined in the 1996 Act, and all providers of such services (emphasis added)."<sup>59</sup> We also specifically rejected AMSC's claim that rate integration applied only to wireline providers of interexchange services. We stated in both the *Rate Averaging and Rate Integration Order* and the *Rate Integration Reconsideration Order* that AMSC, a CMRS service provider, is required to integrate its rates.<sup>60</sup> Moreover, GTE specifically raised on the record on reconsideration the issue of rate integration across affiliates, clearly implicating application of rate integration across CMRS affiliates, and we explained that it was necessary to apply rate integration requirements across affiliates in order to maintain, and further achieve, the rate integration policy of section 254(g).<sup>61</sup>

20. We also find that, especially in light of our stay discussed above, PrimeCo has failed to demonstrate that application of rate integration requirements will result in irreparable harm to it or other CMRS providers. With respect to application of rate integration requirements generally, PrimeCo and the commenting parties have failed to show, to the extent that they are not already substantially in compliance, that they would be harmed by offering any separate offering of interstate interexchange service on an integrated basis.

21. Our rate averaging and rate integration rules afford CMRS providers some types of flexibility in implementing rate integration, to the extent that they are not now in

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<sup>57</sup> Since we are staying, pursuant to section 1.103(a) of our Rules, application of our affiliate rule to CMRS providers, we do not address, under *Virginia Petroleum Jobbers Ass'n*, whether PrimeCo is likely to prevail on the merits of that issue.

<sup>58</sup> See *Rate Averaging and Rate Integration NPRM*.

<sup>59</sup> *Rate Averaging and Rate Integration Order* at ¶ 52.

<sup>60</sup> *Rate Averaging and Rate Integration Order* at ¶ 54; *Rate Integration Reconsideration Order* at ¶¶ 24-27.

<sup>61</sup> GTE Petition for Recon. at 11-12; *Rate Integration Reconsideration Order* at ¶ 16.

compliance. In the *Rate Averaging and Rate Integration Order*, for example, we decided to forbear from applying Section 254(g), consistent with the intent of Congress, to the extent necessary to permit carriers to depart from geographic rate averaging to offer contract tariffs, Tariff 12 offerings, optional calling plans, temporary promotions, and private line services.<sup>62</sup> We also decided to permit carriers to offer temporary promotions<sup>63</sup> that may be "geographically limited," provided that the promotions are temporary, *i.e.*, limited to no more than 90 days.<sup>64</sup> We noted that our rate integration rules require that, to the extent that a provider of interexchange service offers optional calling plans, contract tariffs, discounts, promotions, and private line services to its subscribers in one state, it must use the same ratemaking methodology and rate structure when offering those services to its subscribers in any other state.<sup>65</sup> For all of these reasons, we conclude that PrimeCo and other carriers will not be irreparably harmed by application of rate integration requirements to them. Because we have determined that PrimeCo has failed to meet the first two elements of the standard for granting a stay, *i.e.*, that it is likely to prevail on the merits and that it would be irreparably harmed by application of rate integration requirements, we find it unnecessary to address whether grant of the requested stay would substantially harm other interested parties or serve the public interest.

## V. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED that the "Motion for Stay of Enforcement of PrimeCo Personal Communications, LP," IS GRANTED to the extent discussed above, and IS OTHERWISE DENIED.

23. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.103(a) of the Commission's Rules, 47 C.F.R. § 1.103(a), that application of rules requiring rate integration across CMRS affiliates established in the *Rate Integration Reconsideration Order* IS STAYED pending further reconsideration of the *Rate Integration Reconsideration Order*.

24. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications

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<sup>62</sup> *Rate Averaging and Rate Integration Order* at ¶ 27

<sup>63</sup> Temporary promotions involve discounts from basic rate schedules as well as limited sign-up periods for the promotional discount rates. See *Rate Averaging and Rate Integration Order* at ¶ 20.

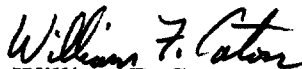
<sup>64</sup> *Id.* at ¶ 30.

<sup>65</sup> *Id.* at ¶ 67.

Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.103(a) of the Commission's Rules, 47 C.F.R. § 1.103(a), that application of rules requiring CMRS providers to integrate their rates to the extent that they provide wide area rate plans IS STAYED pending further reconsideration of the *Rate Integration Reconsideration Order*.

25. IT IS FURTHER ORDERED that this Order IS EFFECTIVE upon the date of adoption.

FEDERAL COMMUNICATIONS COMMISSION

  
William F. Caton  
Acting Secretary